

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VERONICA ORTIZ,

Plaintiff,

-against-

MICHAEL CHERTOFF, SECRETARY, U.S.
DEPARTMENT OF HOMELAND SECURITY,

Defendant.

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DEBORAH A. BATTS, United States District Judge.

On May 1, 2009, United States Magistrate Judge James C. Francis issued a Report and Recommendation ("Report"), recommending that Defendant's Motion to Dismiss or, in the alternative, Motion for Summary Judgment be GRANTED. (Report at 1.) For the reasons contained herein, Magistrate Judge Francis's Report and Recommendation shall be ADOPTED.

I. ADOPTION OF REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(C), "[w]ithin ten days after being served with a copy [of the Magistrate Judge's Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations." 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b) (stating that "[w]ithin 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations"). The District Court is required under 28 U.S.C. § 636(b)(1)(C) to make a "de novo determination of those

portions of the report or specified proposed findings or recommendations to which objection is made."

A letter from Plaintiff Veronica Ortiz, with an attached letter by her daughter, Cynthia Mendez (addressed to Vivian Gordon, and dated October 11, 2008), was sent to Judge Francis's Chambers and received on May 13, 2009. It was received in this Chambers on May 14, 2009. Although untimely, affording lenity towards pro se litigants, the Court nevertheless considers the objections.

The Court has reviewed Plaintiff's objections and finds them lacking any specific argument that addresses the findings of Judge Francis. Plaintiff and her daughter claim that she attended her Naturalization Hearing on April 3, 2008. But regardless of whether she did attend that interview, she does not dispute Judge Francis's finding that she failed to exhaust her administrative remedies by requesting a review (within thirty days) of the unfavorable naturalization decision rendered against her in July 2009. Consequently, dismissal of her claim is proper on those grounds alone, for failure to exhaust.

Furthermore, Plaintiff does not dispute the finding of Judge Francis that she was issued a Notice to Appear in removal proceedings in January 2008, and that being in removal proceedings precludes both this Court and the Attorney General from considering any naturalization application. For that

additional reason, summary judgment for the Government is proper as well.

Where a party only raises general objections, "a district court need only satisfy itself there is no clear error on the face of the record." Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); see also Brown v. Peters, 1886 WL 5999355, 1997 U.S. Dist. LEXIS 14718, at *7 (N.D.N.Y. Sept. 22, 1997) (where only general objections are filed to report and recommendation, a court need only review for clear error) (citing cases). Indeed, "objections that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original [papers] will not suffice to invoke de novo review. . . ." Vega v. Artuz, No. 97 Civ. 3775, 2002 WL 31174466, at *1 (S.D.N.Y. Sept. 30, 2002). Such objections "would reduce the magistrate's work to something akin to a meaningless dress rehearsal." Id. (citations and internal quotations marks omitted). See also Kiggins v. Barnhart, 2004 WL 1124169, at *1 (S.D.N.Y. May 20, 2004) (reviewing the report and recommendation for clear error where objections were essentially reiterations of arguments made in earlier submissions and conclusory accusations). After conducting the appropriate level of review, the Court may then accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate. 28 U.S.C. § 636(b)(1)(C); see also Local Civil Rule 72.1(d).

Because Plaintiff's objections are general and merely re-assert arguments already submitted to the Magistrate Judge, this Court need only review the Report and Recommendation for clear error. Having found no clear error on the record, the Report and Recommendation of United States Magistrate Judge James C. Francis, dated May 1, 2009, is APPROVED, ADOPTED and RATIFIED by the Court in its entirety.

II. CONCLUSION

For the reasons contained herein, the May 1, 2009, Report and Recommendation of Magistrate Judge James C. Francis is APPROVED, ADOPTED, and RATIFIED. Defendants' Motion for Summary Judgment is GRANTED. The Clerk of Court is directed to terminate all pending motions and CLOSE THE DOCKET for this case.

SO ORDERED.

Dated: New York, New York

August 14, 2009


DEBORAH A. BATTS
United States District Judge